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Supreme Court of the United States

OCTOBER TERM, 1970

Nos. 669, 680-685, 691, 692

MUNICIPAL DISTRIBUTOR GROUP, ET AL., *Petitioners,*

v.

FEDERAL POWER COMMISSION, ET AL.

REPLY OF MUNICIPAL DISTRIBUTOR GROUP, PETITIONER IN NO. 669, TO SUPPLEMENTAL STATEMENTS

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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The so-called "Settlement Proposal" filed with the Federal Power Commission on November 6, 1970, by the United Distribution Companies,[1] which admittedly[2]

[1] A number of the distributors comprising the United Distribution Companies are members of natural gas pipeline systems having a stake in higher prices for natural gas production by reason of their important ownership of, and pecuniary interest in, natural gas production properties.

[2] See Supplemental Statement in No. 691 at page 2 and the Commission's Supplemental Memorandum at page 2.

is not supported by all parties to the Southern Louisiana Area Rate Proceedings and has not yet been considered by the Commission, emphasizes, rather than diminishes, the importance of the petition for a writ of certiorari of the Municipal Distributor Group and the necessity for an immediate decision by this Court of the questions presented by that petition, if the primary aim of the Natural Gas Act—protection of gas consumers from exploitation at the hands of natural gas producers and natural gas pipeline companies—is to be realized. *FPC* v. *Hope Natural Gas Co.*, 320 U.S. 591, 610.

The "Settlement Proposal," would, if approved by the Commission, retroactively revise the just and reasonable rates prescribed by the Commission in Opinions and Orders No. 546 and 546A, which were affirmed by the court below, and would deprive consumers of the refund of $375 million of charges found by the Commission to be excessive. Supporting the United Distribution Companies' motion for promulgation of the settlement proposal, the Staff of the Commission has just represented to the Commission:

> . . . The resolution of all issues in the Southern Louisiana area necessarily required consideration of Docket Nos. AR 61-2, *et al.* Although the Commission has already issued orders in those proceedings, *the Court of Appeals for the Fifth Circuit has given the Commission authority to reopen any part of its orders that circumstances require be reopened.* (Italics supplied)

And the Commission itself in its Supplemental Memorandum filed in this Court admits (p. 3) that "some of the issues raised here also underly the proposed

settlement", thus putting to rest once and for all the suggestion of prematurity contained in briefs in opposition to the petition for a writ of certiorari of the Municipal Distributor Group.

Moreover, contrary to the contentions of petition in No. 691 (Supp. Statement, p. 2) and of the Commission (Supp. Memo., p. 3), the grant of the Municipal Distributor Group's petition will not impede resolution of producer rate issues. Rather, instability and uncertainty will remain for years if the questions presented by the petition of the Municipal Distributor Group are not decided at this time. For upon approval of the "Settlement Proposal" by the Commission, questions respecting the validity of the retroactive revision of the rates, and denial of refunds to consumers, inherent in the "Settlement Proposal," will be submitted to a United States court of appeals for an appropriate Circuit for review and, thereafter, either on petitions of producers or consumers, will be back before this Court after a delay of a year or more, during which time instability and uncertainty will prevail.

If the petition of the Municipal Distributor Group were premature before, which it was not, it is not premature now, and uncertainty and delay can only be avoided by decision on the questions presented by the petition at this time.

WHEREFORE, for each and all reasons previously stated, the petition of Municipal Distributors Group for a writ of certiorari and its prayer for summary

reversal of the court below on the questions presented in the petition should be granted.

Respectfully submitted,

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